IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10966 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FIROZKHAN JITSING RATHOD - Petitioner(s)
Versus
COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :
MR RAKESH B SHARMA for Petitioner(s) : 1,
MS BHAVIKA KOTECHA ASSTT GOVERNMENT PLEADER for Respondent(s) : 1-3,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 19/10/2007

ORAL JUDGMENT :

1. By the present petition under Article 226 of the Constitution, petitioner has sought the relief of order dated 03.01.2007 of his detention being set aside. That impugned order dated 03.01.2007 is issued by Police Commissioner,

Vadodara in exercise of his powers conferred under the provisions of section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) on the basis of the opinion formed by the detaining authority that it was necessary to do so to prevent breach of public order on account of involvement of the petitioner in one incident of breach of Immoral Traffic (Prevention) Act, 1956 and an offence being III-C.R.No.248 of 2006 under the Immoral Traffic in Women and Girls Act, 1956 being registered on 27.12.2006 against the petitioner in Makarpura Police Station of Vadodara.

2. Even as the present petition was admitted on 26.04.2007 and an affidavit-in-reply of the detaining authority was ready and executed on 14.06.2007, it was submitted to this court and copy thereof supplied to the petitioner only on 16.10.2007 when the matter was taken up for final hearing. It is stated in that affidavit: "*6..... I say and submit that the order of detention has been passed on the basis of documentary evidence. I say and submit that one offence has been registered against the petitioner under sections 4, 5 and 7 of Immoral Traffic in Women & Girls Act, 1956. I say and submit that the petitioner has not been falsely*

involved in the offence, but after collecting ample evidence against the petitioner, the petitioner has been arrested. I say and submit that the petitioner is doing illegal activities in a sequence and, hence the order of detention is passed under the provisions of PASA. I say and submit that sufficient documentary evidences are available against the petitioner and same have been supplied to the petitioner so that the petitioner can make an effective representation. Therefore, no fundamental rights of the petitioner under Article 22 (5) of the Constitution of India are violated and the order of detention is just, legal and proper". While arguing on the basis of the aforesaid affidavit, learned A.G.P. Ms. Bhavika Kotecha fairly conceded that two co-detenues detained under identical orders passed on the same grounds and material were already released upon the orders of detention being set aside by this Court by orders dated 14.6.2007 in Special Civil Applications No.2248 of 2007 and 2263 of 2007. It was also fairly conceded that neither any distinguishing feature from those cases nor any additional arguments were available for the respondents.

3. In the above facts, it was sought to be argued on behalf of the respondents that the

petitioner was involved in a very serious offence of indulging in immoral trafficking and that his activities were a threat to public order since his continued involvement in such activities could be hazardous to public health and, for that reason, the subjective satisfaction about the necessity of preventing the petitioner from acting in any manner prejudicial to the maintenance of public order and the impugned order directing his detention were legal and justified.

4. In a judgment delivered by this Court (Coram: Akil Kureshi, J.) in a matter of similar nature in Special Civil Application No.10963 of 2007, the following observations have been made:

> *"6. Having heard learned advocates appearing for the parties and having perused the material on record, I find that the opinion formed by the detaining authority is not sustainable in the eye of law. As noted earlier, except for one isolated incident involving the petitioner in breach of the provisions of Immoral Traffic(Prevention) Act, 1956, there is no further material to suggest that the activities of the petitioner are in breach of public order.*
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> *7. Though there was material on record before the detaining authority to suggest that the*

petitioner was involved in running a brothel and was thus involved in the business of supplying women for immoral trafficking, the question is whether that by itself can be stated to be the activity in breach of public order. Such offences though pose problem of law and order, concept of public order is much different. The detaining authority undoubtedly relied on certain statements recorded by the police authorities while investigating the said offence in which it is stated that the petitioner had assaulted members of the public in public view thereby spreading terror. Here again the moot question is whether one or two such isolated instances would categorise the activities of the petitioner as threat to public order.

8. In the case of ***Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City and another****, reported in AIR 1989 Supreme Court 491, the Apex Court observed that merely because a person is bootlegger, he cannot be preventively detained under PASA unless his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. It was observed that a person may be very fierce by nature, but so long as the public generally are not affected by his activities or conduct,the question of maintenance of public order will not arise. In order that an activity may be said to affect adversely the maintenance*

of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of any offence will not necessarily come within the purview of public order.

8.1 In case of ***Ashokbhai Jivrajbhai @ Jivabhai Solanki v. Police Commissioner, Surat & ors.*** *reported in 2000(1) GLH 393, Division Bench of this Court examined validity of detention order of the detenue under PASA against whom certain criminal complaints were pending. In the said case, Division Bench relied on the earlier decision of Apex Court reported in AIR 1966 SC 740 and held that case of the detenue falls under maintenance of law and order and not public order.*

9. From the above discussion, I find that there was no sufficient material before the detaining authority to come to the conclusion that the activities of the petitioner are in breach of public order. The opinion formed by the detaining authority therefore, is not sustainable in eye of law. The detention order therefore, based on such an opinion cannot be

sustained, same is required to be quashed".

5. In the facts of the present case, nothing from the material on record could substantiate or justify the presumption that the alleged activity of the petitioner was prejudicial to public order or public health and to prevent breach thereof, the petitioner was required to be placed under detention.

6. Therefore, in the facts and circumstances, the impugned order dated 03.01.2007 of preventive detention is found and held to be unsustainable in law and set aside with the direction that the petitioner, Firozkhan Jitsing Rathod, shall be set at liberty forthwith unless required to be detained in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)